

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Leslie C. McCann,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 15A 0054

Decision and Order Affirming the Saunders
County Board of Equalization

Background

1. The Subject Property is a twenty (20) acre parcel located in rural Saunders County, Nebraska.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$40,450 for tax year 2015.
3. The Taxpayer protested this value to the Saunders County Board of Equalization (the County Board) and requested an assessed value of \$27,500 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$46,180 for tax year 2015.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 7, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz. The hearing was recessed until April 8, 2016, for the purpose of leaving the record open in order for the Commission to be provided additional information regarding the issue of irrigation. The Commission subsequently received information regarding an inspection of the Subject Property completed on March 11, 2016.
7. Leslie C McCann (the Taxpayer) was present at the hearing.
8. Steven J. Twohig, Saunders County Attorney, and Kyle Morgan, an employee of the County Assessor, were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

11. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴
12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The evidence indicates that 11.74 acres of the twenty acre parcel were wasteland. Neither party disputed that fact.
17. The Taxpayer asserted that the remaining 8.26 acres frequently flood and did so three times in 2015. He therefore contends that it should also be classified as waste. The Subject Property is located in a flood plain.
18. The contested portion of the subject property was classified by the County Assessor as irrigated land used as a sod farm. The evidence supports this classification. According to the referee’s report, the irrigation of the property was verified by the NRD. The subsequent inspection requested by the Commission did not demonstrate the existence of irrigation on March 26, 2016, but did indicate that some form of irrigation existed as of January 26, 2016.

² See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

19. As previously noted, when considering an appeal a presumption exists that the Board of Equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to support its decision. The presumption disappears only when competent evidence is adduced to the contrary. Based upon the record before it, the Commission cannot find that the Taxpayer presented sufficient evidence to overcome the presumption.
20. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015 is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is \$46,180.
3. This Decision and Order, if no further action is taken, shall be certified to the Saunders County Treasurer and the Saunders County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2015.
7. This Decision and Order is effective on May 3, 2016.

Signed and Sealed: May 3, 2016

Robert W. Hotz, Commissioner